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T.L., Appellant)	
)	
and)	Docket No. 15-466
)	Issued: April 20, 2015
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS BENEFITS ADMINISTRATION,)	
Buffalo, NY, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On December 24, 2014 appellant filed a timely application for review from a September 2, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from May 27, 2014, the date of the most recent merit decision, to the filing of this appeal, and pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 21, 2013 appellant, then a 50-year-old veterans' claims examiner, filed an occupational disease claim alleging that she acquired tendinitis in her left arm. She stated that she "gradually began to notice that it was becoming increasingly more difficult to use my left arm without experiencing pain; loss of range of motion and muscle strength while performing my daily duties." Appellant first became aware of her condition and of its relationship to her employment on August 1, 2013.

By letter dated December 24, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim for compensation. It noted that it had not received any medical documentation in support of her claim. OWCP afforded appellant 30 days to submit additional evidence.

In a report dated September 25, 2013, Dr. Nita Divan, Board-certified in family medicine, assessed appellant with pain in her left forearm. Appellant reported to Dr. Divan that she had been helping to take care of her ill mother, which may have exacerbated the pain.

Appellant submitted physical therapy notes dated October 3, 2013.

In a narrative statement dated November 21, 2013, appellant noted that in the course of her federal employment, she must perform continuous repetitive actions involving her hands and arms, including typing, manipulation of light to heavy folders, reaching, stretching, pulling, lifting, shifting, and relocation to multiple work areas in the regional office. She noted that she had a prior claim, and had been evaluated and treated for bilateral carpal tunnel syndrome as related to duties of her federal employment. Appellant stated that in August 2013, she first began noticing pain in her left arm, which she mistakenly thought was an acute event with no probability of becoming a chronic condition. In September 2013, she noticed more chronic symptoms including an increase of pain, loss of strength, and loss of range of motion of her left arm. A coworker, in an attached statement, noted that appellant's work was sedentary and that she had no knowledge of her condition or medical documentation to support her disability.

By decision dated February 21, 2014, OWCP denied appellant's claim for compensation. It found that the medical evidence of record was insufficient to establish that she had been diagnosed with a condition in connection with duties of her federal employment. OWCP noted that the only assessment received in support of appellant's claim was for pain, which was a symptom and not a diagnosis.

In a report dated March 26, 2014, Dr. Michael Cicchetti, Board-certified in physical medicine and rehabilitation, diagnosed appellant with bilateral lateral epicondylitis. He noted that it was unknown how her injury happened. Dr. Cicchetti stated, "In my professional opinion [appellant's] symptoms are most likely related to her work environment. I have recommended that she resubmit this case to the work[ers'] comp[ensation] board. [Appellant] spends the majority of her eight-hour days on the computer typing and using a mouse. She is also constantly lifting and moving claim folder[s] ... around. [Appellant] denies any other recreational or home risk factors for an overuse injury to the elbows."

On March 29, 2014 appellant requested reconsideration of OWCP's February 21, 2014 decision.

By decision dated May 27, 2014, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision of February 21, 2014. It noted that Dr. Cicchetti's March 26, 2014 report contained speculative or equivocal language regarding the cause of appellant's injury and stated that it was unknown how her injury happened.

On August 8, 2014 appellant requested reconsideration of OWCP's May 27, 2014 decision.

In a report dated July 23, 2014, Dr. Cicchetti noted that appellant had presented on that date for ultrasound evaluations of her extensor tendons and lateral epicondyles. He diagnosed her with right lateral epicondylosis with evidence of an enthesophyte versus calcific tendinopathy at the most lateral tip of the epicondyle, and a focal region of tendinosis within the deep portion of the common extensor tendon; and a left lateral epicondylar enthesophyte with a relatively normal-appearing extensor tendon origin.

On July 30, 2014 appellant summarized the contents of her request for reconsideration and contended that Dr. Cicchetti's July 23, 2014 report contained a physician's opinion with a supported medical explanation as to how work activities in her federal employment caused or aggravated her medical condition.

By decision dated September 2, 2014, OWCP denied appellant's request for reconsideration of her claim and did not review the merits of her case. It found that the report from Dr. Cicchetti was irrelevant, as it offered no discussion of appellant's work factors; and that the letter of July 30, 2014 was irrelevant as it was not material to the medical issues in the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that it erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by it.² Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴ The Board also has held that the submission of evidence which

² 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

³ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁴ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

does not address the particular issue involved does not constitute a basis for reopening a case.⁵ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁶

ANALYSIS

OWCP issued a May 27, 2014 decision denying appellant's claim for occupational disease, as she did not submit medical evidence containing a rationalized physician's opinion on the issue of the causal relationship between work factors and her diagnosed conditions. By form received on August 8, 2014, appellant requested reconsideration of this decision.

The Board does not have jurisdiction over the merits of the May 27, 2014 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. In her August 8, 2014 request for reconsideration and in a follow-up letter dated July 30, 2014, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The underlying issue in this case is whether appellant had established a causal relationship between the claimant's diagnosed conditions and compensable employment factors.⁷ A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. While the July 23, 2014 report of Dr. Cicchetti was not previously of record, it is irrelevant to the grounds upon which OWCP denied appellant's claim on May 27, 2014. The July 23, 2014 report did not contain a discussion of specific work factors related to appellant's diagnosed conditions, nor did it contain a physician's opinion as to the cause of these conditions. Instead, it merely contained diagnostic notes relating to an ultrasound of appellant's bilateral upper extremities. As such, the July 23, 2014 report of Dr. Cicchetti was not relevant to the grounds upon which appellant's claim was denied and was insufficient to require a merit review of her claim. Similarly, appellant's own statement, which was not medical evidence, was irrelevant to the grounds upon which her claim was denied and insufficient to require a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

⁵ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁶ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

⁷ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2014 is affirmed.

Issued: April 20, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board